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THE LAWYER AND THE PRESERVATION OF SOCIETY

STEPHEN J. RUEVE, S.J., M.A., M.S., PH.D.

The cohesiveness of society depends upon its laws, and hence it is that men skilled in the law exercise an important function in maintaining this cohesiveness through the proper application of just laws. For man is destined by God, his Creator and Designer, to live in society and to co-operate with his fellowmen in the realization of the welfare of all the individuals, which in turn is to be brought about through the realization of the common good. But human nature, as we find it, does not co-operate spontaneously and smoothly. True it is, that all normal minds understands the indispensability of co-operation, but the selfish impulses of vast numbers prompt them to seek their own advantage exclusively, leaving the socially necessary co-operation to others whom they consider less astute.

This deplorable fact was the inspiration for the term, "chiseler" popularized in the phrase-making era of the early New Deal. This lack of co-operation serves too as one of the foundation-stones of the *Leviathan*, published in 1651 by Thomas Hobbes. Now, the ultimate purpose of this work was to denounce the political execution of autocratic Charles I of England in 1649; but its immediate intent was to construct a rational prop for the institution of monarchical absolutism, under which the co-operation of all subjects would be compelled by the irresistible power of the state, concretized in the royal personage. Hobbes was an interesting, crotchety, and pugnacious old royalist, whose originality and mental acumen have been much overrated by posterity and especially by himself. His bigotry and self-assurance led him into many an error; but even he did not succeed in being a hundred percent wrong, and there was just enough factualness in his superficial observations to win him an undying place in English literature for his analysis of the origin and nature of the state. He pictured a pre-societal man living in a miserable condition of "war of all against all," in which unbridled liberty nullified personal security, in which man finally through experience came to realize that, in order to live, he must organize — setting up a state powerful enough to coerce any member or group within it who would oppose it. And so, despite his fundamentally false materialism and superficial observation, he is correct in his contention that man's rights, and hence man's welfare, cannot prevail unless man lives in organized society operating through laws and equipped with the might to apply force when need arises.

But — Hobbes notwithstanding — force is not the essence of human government, nor is the arbitrary decree of any dictator however powerful, even though he be elected by popular acclaim. For, standing forth as the first great and immovable landmark, is human nature — human nature as individualized in John and Joe and George and the billions of others, each of whom has an indefeasible intrinsic worth, each of whom is basically the equal of everyone else, each of whom, therefore, is endowed by his Creator with certain unalienable rights, among which are life, liberty, and the pursuit of happiness. Not a modern theory is this, but of ancient lineage, acknowledged and put into practice with varying degrees of imperfection during the long course of human existence. Listen, for example, to Pope St. Gregory the Great in the 6th century writing to the usurping Emperor Phocas at Constantinople:

“Let each one have his freedom re-acknowledged under the yoke of considerate rule. For this is the difference between the kings of barbarians and the emperors of the Roman Commonwealth: the kings of barbarians are the lords over slaves, while the emperors of the Commonwealth are rulers over free men”.¹

This human dignity, this human worth and inviolability, finds widespread and clamorous lip-service. It is the catch-phrase of every rabble-rousing demagogue, it is the clarion call to arms for true patriots, it is the standard of those who serve mankind, the mask of the self-seeking, and the funeral-pyre of heroes. No prospective dictator dares to submerge it to any other aim, and not until he has consolidated his tyranny does he venture to proclaim that individual worth is subordinate to state, race, or class respectively as he is Fascist, Nazi, or Communist. But so thoroughly is the appreciation of human worth interwoven with everyone's thought, so evident to man's mind that — even with tyrannical power well established — dictators inadvertently lapse into eulogies of the dignity of the individual.

Nevertheless, however loud and widespread the acclaim may be of human worth and dignity, it is losing its strength. In defense against the pragmatic ruthlessness of dictators, the defenders of human rights are playing wishfully with cardboard artillery, trying to create an impressive sound with pop-guns and rattles from the nursery. For they are skeptical about the truth of their own cause. Some inconsistently trust to the righteousness of the cause, which they consider devoid of factual foundation; others stubbornly continue the fight in the pragmatic determination that as long as they have the physical force they might just as well use it. Few of the defenders of human rights and dignity find the foundation where alone it can be found, namely in the divine law.

¹ *Epistolarium* lib. XIII, Indict. VI, Epist. XXXI.

For the vast majority have succumbed to the sophistries of secularism: with Hobbes they find the essence of civil authority in irresistible physical force; with Hegel they see in the state an absolute which creates right and can do no wrong; with the current of present-day American legal philosophers they smile condescendingly upon the signers of the Declaration of Independence who naively wrote of unalienable rights conferred upon man by an extra-mundane Creator. The substance has gone out of the defense of human rights and dignity just as secularism has stolen in; our legal philosophy is not one whit better than that of the Fascists or Communists or Nazis, though for a few years to come our legislation and practice will be better than theirs; the present belaboring of the Communists is based on the fact that we do not like their *modus operandi*, and not on the fact that they aim to deprive human beings of rights bestowed by God. Much could be said about the connection between this degenerate condition of American legal philosophy and the confusion that faces the governmental bodies inquiring into un-American activities of federal officials. We professedly assume that totalitarianism is un-American, and yet the logical conclusion of the present-day doctrine that all rights are concessions of the state, is that the state may deprive the citizens of all rights whatsoever. (Constitutional guarantees can be rendered ineffectual by judicial interpretation or removed by amendment.)

In accounting for the guarantees in the Bill of Rights, even such a penetrating writer as Walter Lippman could not quite bring himself to proclaim that they come ultimately from God. For, what he says is true enough, but he must stop short by attributing them to the rationality of the soul and the inviolability of the human person, leaving his readers to wonder who guarantees this inviolability. In his column in the *New York Herald Tribune* several years ago, we read:²

"No one can explain the Bill of Rights to some one who does not believe that the soul is rational and, that therefore the human person is inviolable. If he has not grasped this truth, if he has not had this revelation, if he does not know the idea which these words express, how will you convince him that his religion shall not be prescribed by public officials, or that he has the right to speak, and to listen, or that the powers not delegated to the government are reserved to the people? How will you affirm that freedom is better than tyranny if you are not able to affirm that it is the destiny of man's nature that he should be free? No one can prove the value of liberty by drawing up a balance sheet of profits and losses. If men do not understand that the origin of their liberties is in the nature of man, they will not really understand their liberties, nor learn to value their liberties until they have let them be destroyed. And so, though they live in freedom, they will squander their

² *Herald Tribune*, Dec. 14, 1939.

inheritance, having forgotten how it was earned and accumulated."

It is not human nature, however, existing in a vacuum, or human nature serving as its own support, which is the foundation of human rights. Human nature serves but to indicate for us the will of its Creator, just as the handiwork of any intelligent designer indicates the designer's intent and purpose. Now, applying our reason to the study of human nature, we discover from man's capacities and inclinations and needs that it is God's will that man be free and auto-centric, that he be not used as the mere means in the interests of others, whether of individuals or groups, that his dignity and inviolability be respected by all his fellowmen — in a word, we discover that in the divine plan he is basically equal to everyone else, and hence cannot be subjected to another except by his own consent or by divine disposition. Even the laws enacted for his guidance, whether secular or ecclesiastical, whether by the majority of the members of society for the governance of themselves and of the minority, or by rulers chosen by himself or appointed by divine will — even these laws must regard as sacred the intrinsic dignity of human nature. For even before human laws — constitutional or statutory — are enacted, there is a fixed pattern or standard to which they must conform. As St. Isidore of Seville wrote in the 7th century Visigothic Kingdom in Spain:

"A morally upright law will be just, possible, according to nature, according to the usage of the country, suitable to place and time, necessary, useful, clear also lest its obscurity be conducive to fraud, and not written for any private interest but for the common advantage of the citizens".³

And the reason why the laws must meet this standard? Because God has shown by the kind of nature He has given man that this is His will, that He guarantees the rights which serve as the rampart of defense for human dignity, and that He will require an account of all who presume to trespass upon it.

Every lawyer is a member of a noble profession: he has been co-opted into a group of men who, as a group, engage to preserve and to perfect an institution established by God Himself, namely human society, and to apply to this end the means that He has prescribed, namely the preservation of human dignity through the defense of the citizen's rights.

How conscientiously they fulfill the commission given them on their admission to the bar, will depend entirely upon themselves. Temptations are not lacking, beckoning them on to reap profit at

³ *Etymologarum* lib. II, cap. x, 6.

the cost of violating their oath of office by which they solemnly call upon God to witness that they will work to secure equal justice to all. Opportunities are not lacking in which by the use of trickery, deceit, perjury even, they can violate the rights of their fellow-citizens, clients or opponents, and thus negate the inviolability bestowed upon all men by God. Physicians, clergymen, businessmen, instructors, laborers, capitalists, all are charged with the responsibility of maintaining the rights of others, of individuals and of society; but whether they do so or not, here on earth rests ultimately on the legal profession as a whole functioning as legislators, judges, counselors, administrators. Whether on the one hand we live in orderly society, or whether on the other we live amid the brutality of anarchic chaos, depends upon the ability and especially upon the faithfulness with which the legal profession *en masse* performs its functions.

And in determining the standard of his professional conduct, a lawyer ought to be too intelligent to employ the stupid dichotomy by which personal and professional morality are set apart. This subterfuge really deceives nobody, not even those who seek to bemuse themselves by it. There is only one standard of morality prescribed by the divine law, and only one court in which we are finally tried. In this court there is no place for demurrers, or motions to quash, or motions for a change of venue, or for dilatory pleas. Everybody — even lawyers — will have to appear for trial before an omniscient Judge who needs neither witnesses nor jury; who can be neither coerced by force nor deceived by fraud nor intimidated by threat; to whom it is of no account whether professional malfeasance was shrewd enough to escape professional disbarment; whose standard of morality does not shift with the ebb and flow of the paganism in our civilization. The sole and fixed standard according to which judgment will be passed, is the same divine law applicable to menial and professional man alike, which prescribes our co-operation with the divine will.

In this connection it may be profitable to note, just in passing, a recent distillation of arrant nonsense contained in one sentence. It is nothing new, it derives no importance from the prominence of its author, and it may have been blurted out in an unthinking moment of annoyance; but it is common enough, and it does show how entirely a person can fail to grasp the most fundamental fact of life. In the issue of *Time* for June 16th of this year, a report is made on the attitudes of student veterans interviewed on thirty-eight campuses. Of course there is considerable variety of attitudes, ranging through hope, fear, disgust, bewilderment, disillusionment, and fine courage. One of the students — who is certainly by no means typical of student

veterans — complains that “teachers are trying to impose morality on a situation that demands immorality for success.” To expatiate on the futility and nonsense and utter lack of fundamental orientation displayed in that one sentence would take up too much space and so it had better be left to the reader’s individual reflection. This modern Jeremias laments, in effect, that his instructors are teaching the need of morality, whereas the present situation demands that in order to succeed, a person defy God and thus predetermine himself to complete failure.

Although the individual lawyer is a very small fraction of the two billion people on earth, his influence is much greater than what the abstract arithmetic indicates. As a result of his forty or fifty years of legal activity, the status of social life in his community will have been considerably impressed by him. For he is practically certain to occupy positions of importance, whether as simple attorney, or as legislator, or member of boards and commissions, or as judge. Even if he engages in ordinary practice, he will be consulted by human beings who need assistance — people whose rights are jeopardized through their own folly and ignorance, or through the ill-will of others, or through the inescapable vicissitudes of life. His skill and character, his interest in the public good, will often profoundly affect their lives. For, while he must take the law as he finds it, there is often a marginal area of undefined procedure in which he can operate to heal, instead of aggravating, the sores of the social body. And if he serves in more public and official capacities, he can apply his influence toward directing society’s policy and practice in sane and just channels; and in many unexplored details that are not clearly marked out in black and white, his zeal for the public good and his sound philosophical principles (if he has them) should prompt him to choose in accordance with the divine law.

And so it is that the people as a whole look to the legal fraternity to contribute a mighty share to the welfare of society. Not all the ills of society are attributable to the malfeasance of our learned custodians of the law; and not all the ills can be cured by even perfect performance on the part of every member of the legal profession. But a great share of the task rests upon this noble and influential profession. From it the people hope that its members’ professional conduct and individual lives will contribute mightily toward the rehabilitation of the law and of the courts in the public esteem; from it the people demand that, in accordance with the divine law, each of its members will contribute according to his status towards making society the institution it is designed in the divine plan to be — an effective instrument for the good of man.